



Paper No. 8

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COPY MAILED**JUL 23 2002****OFFICE OF PETITIONS**

In re Application of
Sakamoto, et al.
Application No. 09/874,137
Filed: June 5, 2001
Attorney Docket No. DKT00123

: DECISION ON PETITION
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This is a decision on the "Petition to Accept Declaration", filed May 8, 2002 (Certificate of Mailing dated April 29, 2002), requesting that the Commissioner find that the declaration has been properly filed and that the application be accorded a filing date of June 5, 2001.

The petition is GRANTED.

Application papers in the above-identified application were filed on June 5, 2001. However, as no oath or declaration was submitted, the Initial Patent Examination Division mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" on August 3, 2001. This Notice set a shortened statutory period of two months for Applicant to file and executed oath or declaration (and the surcharge for its late filing). On February 14, 2002, applicant obtained a four month extension of time and filed a reply to the Notice.¹ On March 11, 2002, a "Notice of Incomplete Reply (Nonprovisional) - Filing Date Granted" was mailed. According to this Notice, applicant failed to submit an oath or declaration with his February 14th reply. A search of the application file does not reveal an oath or declaration filed on February 14, 2002.

Applicant argues that he did submit a declaration on February 14, 2002. In response, applicant has included a copy of a postcard receipt, identifying a "Declaration (4 pgs.)" as enclosed, and bearing a United States Patent and Trademark Office date stamp of February 14, 2002.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of

¹ The reply was also made timely by including a Certificate of Mailing dated January 29, 2002.

receipt in the Office of all items listed thereon on the date stamped thereon by the Office.²

Therefore, it follows that since the declaration submitted on February 14, 2002 is not in the application file, it must have been lost by the Office.


In view thereof, the Notice of Incomplete Reply mailed March 11, 2002 is hereby VACATED.

The declaration submitted with the petition on May 8, 2002 is acknowledged and made of record.

Given the basis for granting this decision, no petition fee was required, and none has been charged.

The application file is being forwarded to the Office of Initial Patent Examination for completion of pre-examination processing.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
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for Patent Examination Policy

² See MPEP 503.